IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 968 (S/S) of 2006

Ram Avtar Sharma,
Son of late Sri Gopi Chand Sharma,
Resident of Village – Nagla Gajju,
Post – Samana,
District – Ghaziabad. **…….Petitioner**

V e r s u s

1. Director, Udyan Evam Khadya Prasansakaran, Udyan Bhawan Chaubatiya, Ranikhet, District – Almora.
2. District Udyan Adhikari, District – Champawat.
3. Deputy Director Udyan, Kumaon Mandal, District – Nainital.

…….Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Smt. Indu Sharma, holding brief of Sri Sharad Sharma, learned counsel for the petitioner and learned standing counsel for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

(a) issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 27.06.2006 passed by respondent no. 1 annexed as Annexure No. 1 to the writ petition.

(b) issue a writ, order or direction in the nature of Mandamus commanding the respondents to decide the petitioner's representation in the light of transfer policy dated 29.04.2005.

(c) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstance of the case.

(d) Award costs of the petition.

3. The submission of the petitioner, as narrated in the writ petition, is that petitioner, who was working as Senior Horticulture Inspector in the office of District Horticulture Officer, Champawat was transferred vide order dated 29.06.2006 passed by respondent no. 1. By the aforesaid order petitioner has been transferred from District – Champawat to District – Pithoragarh.

4. Transfer is condition and exigency of service and the same cannot be interfered by the court until and unless the transfer order is made on *malafide* intention, or the transfer come under the category of frequent transfers or is against the statutory provisions. In some cases court can exercise its jurisdiction to interfere with the transfer order where the transfer has been made in the mid session and the order is creating serious problem to the transferred employee.

5. In the present case, transfer order has been challenged by the petitioner on the ground that petitioner has completed 58 years and he will retire in the month of January, 2008. Meaning thereby, petitioner shall retire from service after one and a half year. Government of Uttaranchal has issued transfer policy dated 27.06.2006. Clause 3 Sub Clause 7 of the said policy provides that an employee whose retirement is due within two years can be transferred to any one of the three places for which the employee has opted.

6. In para 11 of the writ petition, petitioner has submitted that he had represented before respondents. Prior to passing of the impugned order for his transfer and he had mentioned three places of his choice, in view of clause 3

sub clause 7 of the policy. However, respondents ignoring those places for which the petitioner had opted transferred the petitioner to Pithoragarh. Learned counsel for the petitioner has further submitted that petitioner is chronic patient of arthritis and no person has been transferred in place of petitioner at Champawat.

7. It is true that transfer policy does not have statutory force. Yet it is expected from the State Government to act according to transfer policy while transferring its employees.

8. In the circumstances stated above, I deem it fit and proper to direct the petitioner to make representation before respondent no. 1 within a period of three weeks from today and respondent no. 1 i.e. Director, Udyan Evam Khadya Prasansakaran, Udyan Bhawan Chaubatiya, Ranikhet, District – Almora shall take decision on the representation considering the Clause 3 Sub Clause 7 of the Transfer Policy issued by the State of Uttaranchal on 27.06.2006 within a period of four weeks from the date of production of certified copy of this order along with representation. In case, petitioner has not been relieved from the post which was held by him at Champawat he shall not be relieved till the decision is taken by the respondent no. 1 on the representation of the petitioner.

9. With this direction the writ petition is finally disposed of. No order as costs.

(M.M. Ghildiyal, J)

July 18, 2006
SKSharama